No. 18,712

United States Court of Appeals

For the Ninth Circuit

Robert Sing Chow, *Appellant,*	
vs.	
United States of America, *Appellee.*	

BRIEF FOR APPELLANT

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No. 18,712

United States Court of Appeals
For the Ninth Circuit

ROBERT SING CHOW, *Appellant*, vs. UNITED STATES OF AMERICA, *Appellee.*	}

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

Appellant filed a petition for naturalization under Section 328 (8 USC 1439) of the Immigration and Nationality Act of 1952 in the United States District Court in and for the Northern District of California, Southern Division, on January 5, 1962. (T. 1-3.) His petition for naturalization was denied by District Judge Stanley A. Weigel on April 3, 1963. (T. 14.) Notice of appeal was filed with the Clerk of the above-entitled Court on April 10, 1963. (T. 16.)

Jurisdiction of the District Court to entertain the petition for naturalization is conferred by Section 310(a) of the Immigration and Nationality Act. (8 USC 1421.) The order of the District Court denying appellant's petition for United States citizenship is a final decision within the meaning of Section 128 of

the Judicial Code. (*Tuton v. U. S.*, 270 U.S. 568, 46 S. Ct. 425, 70 L.Ed. 738.)

Jurisdiction of the Court of Appeals to review the District Court's final order is conferred by Section 128 of the Judicial Code, as amended. (28 USC 1291.)

STATEMENT OF THE CASE

Appellant is a 25 year old single male, a native of China, who filed a petition for naturalization under Section 328 (8 USC 1439) of the Immigration and Nationality Act on January 5, 1962. On August 23, 1950 the appellant first applied for admission to the United States as a citizen thereof following his arrival at the Port of San Francisco, California on board the SS President Wilson. On October 17, 1950, a Board of Special Inquiry concluded that the appellant had failed to establish his claim to United States citizenship—such decision was affirmed on appeal. Thereafter, appellant filed a petition for a declaratory judgment of United States citizenship under Section 503 of the Nationality Act of 1940 in the United States District Court for the Northern District of California. An adverse judgment was entered by that Court on February 19, 1953. The adverse decision of the District Court was affirmed by the Court of Appeals for the Ninth Circuit on November 24, 1954. On a motion for rehearing, the Court of Appeals remanded the case to the District Court for further proceedings in March of 1955. On April 1, 1955, the United States District Court again denied the relief as prayed for

in the petition for declaratory judgment of United States citizenship.

On August 1, 1957, the appellant was inducted into the United States Army and served honorably in an active-duty status until July 31, 1959, at which time he was transferred into the United States Army Reserves, and the latter status continued until a date subsequent to filing of the petition for naturalization in the instant matter.

The Designated Naturalization Examiner recommended that the petition for naturalization be denied "on the grounds that the petitioner has failed to establish lawful admission to the United States for permanent residence". (T. 13.) The District Court accepted the recommendation of the Designated Naturalization Examiner and order that the petition for naturalization be denied. It is from that adverse decision that the present appeal follows.

STATUTES INVOLVED

All of the pertinent parts of

Section 328, Immigration and Nationality Act, (8 USC 1439),

Section 324, Immigration and Nationality Act, (8 USC 724),

Section 316, Immigration and Nationality Act, (8 USC 1427), and

Section 318, Immigration and Nationality Act, (8 USC 1429)

as are fully set forth in the Appendix hereto.

SPECIFICATION OF ERRORS

1. The District Court erred in holding that a petitioner for naturalization under Section 328 of the Immigration and Nationality Act must establish that he was lawfully admitted to the United States for permanent residence.

2. The District Court erred in denying appellant's petition for naturalization.

SUMMARY OF ARGUMENT

It is appellant's contention that Section 328 of the Immigration and Nationality Act of 1952 provides that any alien who has served in the Armed Forces of the United States continuously for an aggregate period of at least three years, who is serving at the time of filing such petition or within six months following discharge, who is a person of good moral character and attachment to the Constitution of the United States, may be naturalized without a lawful admission for permanent residence.

ARGUMENT

It has been held that the privilege of naturalization ripens into a right when a petitioner complies with all of the conditions prescribed by Congress.[1] The

[1] *U. S. v. Schwimmer,* 279 U.S. 645; *Tutun v. U. S.* 270 U.S. 568.

question before us is—what the the conditions prescribed by Congress for an alien seeking naturalization under Section 328 of the Immigration and Nationality Act? (8 USC 1439.)

It is asserted that there is no ambiguity in the language of Section 328 when reasonable and effective construction is given to all parts of that section. It is asserted that this appellant is entitled to United States citizenship under the statutory provisions of Section 328 of the Immigration and Nationality Act (8 USC 1439) and that

1. Section 328 by its own language clearly indicates that any person who files his petition for naturalization while serving in the Armed Forces of the United States, following more than three years of honorable service, need not comply with the requirements of Section 316(a) of the same Act (8 USC 1427(A));

2. That Section 318 of the same act (8 USC 1429) specifically exempts a petitioner under Section 328 from establishing lawful admission to the United States for permanent residence as a prerequisite to naturalization;

3. That Section 328 is entitled to the same construction as Section 324 of the Nationality Act of 1940 (8 USC 724), and

4. That the legislative history of the Immigration and Nationality Act of 1952 clearly indicates the Congressional intent to continue the expeditious naturalization provisions pertaining to persons in this cagetory.

POINT 1

Considering the language of Section 328 of the Immigration and Nationality Act of 1952 (8 USC 1439), it is possible to reach only one conclusion, i.e., that any person who has honorably served in the armed forces of the United States for an aggregate period or periods exceeding three years and filed his petition while still in such service or within six months thereafter does not have to comply with the requirements of Section 316(a) of the same Act (App. p. iv), in order to be eligible for this expeditious naturalization.

Subparagraph (a) of the 1952 Act provides that the petitioner "may be naturalized without having resided continuously immediately preceding the date of filing such person's petition in the United States for at least five years and in the state within which the petition for naturalization is filed for at least six months and *without having been physically present in the United States for any specified period* * * *". (Emphasis supplied.) Subparagraph (d) of the same Act, which sets forth the residence requirement for persons filing under the provisions of that section specifically provides that where a person files his petition more than six months after the termination of his honorable service, he must comply with the requirements of Section 316(a) of the same Act.

Section 316 of the Immigration and Nationality Act of 1952 (8 USC 1427) sets forth the general requirements in order to qualify for naturalization. Subparagraph (a) thereof pertains to residence. It is clear that any person seeking naturalization under

the general statute can only do so after he has resided continuously in the United States for a period of at least five years after being lawfully admitted to the United States for permanent residence. However, the 1952 Act sets forth certain exempt classes who do not necessarily have to meet all of the general requirement provisions of Section 316. For example, Section 319 (8 USC 1430) provides that an individual married to an American citizen spouse may be naturalized upon compliance with all of the requirements of Section 316 except that three years is substituted in lieu of the five-year period.

Section 329 (8 USC 1440) provides for the expeditious naturalization of those who performed honorable service in the armed forces of the United States during World War I or World War II. That section states that such naturalization can only be granted if the person was in the United States at the time of enlistment or induction whether or not he had been lawfully admitted to the United States for permanent residence, or in the alternative, if the inductment or enlistment was abroad that he was subsequently admitted to the United States for permanent residence. Section 330 (8 USC 1441) of the same Act provides for the expeditious naturalization of certain aliens who had aggregate honorable service of at least five years on board American vessels. If the person seeking the benefits of that section had five years of service prior to September 23, 1950, he is not required to establish a lawful admission for permanent residence. However, if the aggregate period of five years served on board American vessels is completed subsequent to

September 23, 1950, such person must have been lawfully admitted to the United States for permanent residence prior to filing his petition for naturalization.

The foregoing exemptions are cited in order to draw the attention of the Court to the fact that in each of the other exempt classes the section of law specifically sets forth the requirment concerning lawful admission to the United States for permanent residence. The absence of any such language in subparagraph (a) of Section 328 is indicative of the Congressional intention to exempt persons seeking this benefit from the provisions of that part.

Since the persons who filed their petitions under the provisions of Section 328 more than six months after termination of their service in the armed forces are required by the expressed provisions of subparagraph (d) to comply with the residence requirements of Section 316(a) of the same Act, exclusion of those who file while still in active service or within six months after termination of such service is implied.

It is a general rule of law that:

> "All parts, provisions, or sections of a section, must be read, considered, or construed together, and each must be considered with respect to, or in the light of, all the other provisions or sections, and construed in connection or harmony with the whole." 82 C.J.S. 694.

We do not feel that there is any ambiguity in the language of Section 328 when reasonable and effective construction is given to all parts of that section. Subparagraph (d) of Section 328 may be considered as a

proviso or an exception, reshaping or modifying the text of subparagraph (a). Subparagraph (d) was inserted with a purposeful and deliberate intention. Subparagraph (d) states that in some cases (where the petition is filed more than six months after termination of service) a person seeking naturalization under the provisions of subparagraph (a) must comply with the provisions of the general naturalization statute as contained in Section 316(a). Any other construction would read into the provisions of subparagraph (a) language which is not contained in the statute. Omission of the lawful admission provision in subparagraph (a) clearly indicates the Congressional intent to exempt persons seeking naturalization under this section from complying with those requirements.

The Court's attention is invited to the long established rule of law that in construing a statute, the intent and purpose of the act must be considered and further where there are general and special provisions covering the same subject, the special provisions will prevail. In the case of *Rogers v. United States*, 185 U.S. 83, the United States Supreme Court stated at page 87:

> "It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute. In other words, where there are two statutes, the earlier special and the later general—the terms of the general broad enough to include the matter provided for in the special

—the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, and the general will not be understood as repealing the special, unless a repeal is expressly named, or unless the provisions of the general are manifestly inconsistent with those of the special."

This same Court referred on page 89 to the opinion of Mr. Justice Christiancy speaking for the Supreme Court of the State of Michigan in the case of *Crane v. Reeder*, 22 Michigan 322, 344, and quoted from that case as follows:

"Where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general which, if standing alone, would include the same matter and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision, especially when such general and special acts or provisions are contemporaneous as the legislature is not to be presumed to have intended a conflict."

In the case of *McCaughn v. Hershey Chocolate Company*, 283 U.S. 488, at 492, the Court stated:

"Possible doubts as to the proper construction of the language used should be resolved in the light of the administrative or legislative history."

See also:

Posadas v. National City Bank, 296 U.S. 497, at pp. 503-504.

The United States Court of Appeals for the Eighth Circuit in the case of *United States v. Windle,* 158 F2d 196, at page 199, stated:

> "We recognize the rule that generally special terms of a statute prevail over general terms in the same or another statute which might otherwise control. MacEvoy v. United States, 322 U.S. 102, 64 S. Ct. 890, 88 L. Ed. 1163; Robinson v. United States, 8 Cir., 142 F2d 431. But the purpose of this rule is to give effect to presumed intention of the law-making body. The primary rule of statutory construction requires us to ascertain and give effect to the legislative intention, Flippin v. United States, 8 Cir., 121 F2d 742; United States v. Hartwell, 73 U.S. 385, 18 L. Ed. 830 * * *".

POINT 2

In the lower Court, the Immigration and Naturalization Service by inference conceded that this apellant is exempt from the provisions of Section 316(a) of the Immigration and Nationality Act. It was, however, seriously contended that Section 318 of the same Act (8 USC 1429; App. p. v) required appellant to show a lawful permanent entry. Since both of these Sections, 316 and 318, demand lawful admission for permanent residence as a prerequisite to naturalization, appellant should not be found exempt from the requirements of one and barred by the identical language in the other without careful analysis of the text and motivating purpose of the statute said to prohibit his admission to citizenship.

Proper approach to this task was aptly and succinctly described by the Supreme Court in *Brown v. Duchesne,* 19 How. 183, 15 L. Ed. 595:

> "It is well settled that, in interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute (or statutes on the same subject) and the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into execution the will of the Legislature, as thus ascertained, according to its true intent and meaning."

Section 318 reads, in part, as follows:

> "Except as otherwise provided in this title, no person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of this Act. * * * Notwithstanding the provisions of section 405(b), and except as provided in sections 327 and 328 no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act;"

Section 318, quoted in part above, at first blush prohibits the naturalization of any alien not lawfully admitted for permanent residence, *except as otherwise provided.* (Emphasis supplied.) Further along in the text, the section prohibits the naturalization of any alien against whom there is outstanding a final finding of deportability *"except as provided in sections 327 and 328".* (Emphasis supplied.) Neither section

327 nor section 328 contains language dealing with the naturalization of an alien under deportation proceedings or against whom there is a final finding of deportability. In the text of neither section is there reference to exempting otherwise eligible citizenship applicants from the requirements of section 318, nor indeed is section 318 mentioned.

Since no specific and direct exemption appears, it must be inferred. In addition, the phrase—"except as provided", can have but one meaning, i.e., sections 327 and 328 contain a proviso exempting them from the provisions of Section 318, not in part but in toto.

This position finds further support in simple logic. The text of Sections 327 and 328 both contain provisions exempting aliens from the requirements of Section 316(a), which as previously noted embraces a requirement of admission for permanent residence. Section 318 provided specific authority to admit to citizenship an alien having the prerequisite military service, despite the fact that he may have been found subject to deportation. See *Application of Chin King,* 124 F. Supp. 911, 912; *In re Petition of Yow Leslie Chung,* 199 F. Supp. 566, 567. An alien can not be a lawful permanent resident of the United States and at the same time be the subject of a final finding of deportability. A final finding of deportability must necessarily be substantiated by a determination that the alien is illegally in the United States. We submit that these exempting phrases stand as authority to admit this alien to citizenship under Section 328. No other view is consonant with the unmistakable intent of Congress.

POINT 3

Beyond any doubt, the Immigration and Naturalization Service would not interpose any objection to the naturalization of this appellant if his application were being considered under the provisions of Section 324 of the Nationality Act of 1940. The Courts and the Immigration and Naturalization Service ruled on numerous occasions that an alien who filed a petition for naturalization under Section 324 of the Nationality Act of 1940 was not required to perform such service subsequent to a lawful entry into the United States.

The District Court for the Western District of New York states in *In re Fleischmann,* 49 F. Supp. 223, at page 224:

> "(1) It appears palpable that such 'residence' in Section 324(c) only calls for such residence as may be verified and proved in the same manner as under Section 309, supra. It would do violence to the clear intent of both Section 324 and Section 325 to hold that only 'legal residence' was considered in Section 324(c). If 'legal residence' was intended in Section 324(c), then there would be no point in exempting the petitioner from a certificate of arrival except to save him a fee therefor. These sections were intended to relieve similarly situated petitioners of proof of ordinary legal residential requirements of which the pursuit of their calling made difficult. Then, in Section 324(d) and its counterpart under Section 325, where the termination of such service has been more than six months preceding the date of filing the petition, compliance with the requirements of Section 309 is mandatory."

A similar ruling was reached in the case of *Petition of Gislason,* 47 F. Supp. 46.

This point was considered by the Court of Appeals for the Ninth Circuit in the case of *Yuen Jung v. Barber,* 184 F.2d 491. In a footnote at the bottom of page 497, the Court stated:

> "12. We have considered the question, not argued here, whether the order must be affirmed because of petitioner's original illegal entry. But since the requirement of lawful entry in the ordinary case, is based upon the statutory requirement of continuous residence. United States v. Kreticos, 59 App. D.C. 305, 40 F2d 1020, we have concluded that since section 724a not only dispenses with certificates of arrival but expressly provides that 'no period of residence within the United States * * * shall be required', lawful entry is not a condition to naturalization under this section."

Let us compare the language of Section 324 of the Nationality Act of 1940 (8 USC 724) with the language of Section 328 of the Immigration and Nationality Act of 1952 (8 USC 1439). The pertinent parts of these two sections are set forth in the appendix at pages i-iv.

The Court is requested to take judicial notice of the fact that any petitioner for naturalization, whether he files under the veteran provisions or general provisions of the Immigration and Nationality Act, is no longer required to comply in all respects with the provisions mentioned in subparagraphs (b)(1) and (b)(2) of Section 324 of the Nationality Act of 1940.

Both of such requirements have been eliminated from the provisions of the new Act. A close examination of the language of these two sections from different Acts will show that they are substantially identical. Since there was no material change in the language of subparagraph (a) of the two sections, the earlier judicial and administrative determinations are entitled to great weight.

If the appellant was entitled to naturalization under Section 324 of the old Act, he is entitled to naturalization under similar language contained in the new Act. It must be presumed that at the time of Congressional reenactment of the provisions of Section 324 of the Nationality Act of 1940 in substantially the same language in Section 328 of the Immigration and Nationality Act of 1952, Congress had full knowledge and information as to the judicial and executive decisions with respect to such prior existing legislation. Since Congress did not explicitly declare, or by implication indicate, an intention to change the provisions of that section, it must be concluded that the prior interpretations are controlling here.

It is asserted that under the judicial precedents heretofore cited that this appellant is entitled to admission to United States citizenship at this time for the reasons heretofore set forth.

POINT 4

In order to protect the appellant's interests, it is deemed advisable to discuss the legislative history re-

lating to this particular section of the Immigration and Nationality Act of 1952.

After approximately three years of intensive and searching investigation, as well as an exhaustive study, Congress on June 27, 1952 passed H.R. 5678, the so-called McCarran-Walter Act. The exhaustive investigation and study was incorporated into a voluminous report (S. Rep. 1515, 81st Congress, 2nd Session) which contains certain basic findings and suggestions of the Committee. Upon conclusion of that study, S. 3455 was introduced by Senator McCarran in the 81st Congress—no action was taken. In the 82nd Congress, S. 716, introduced by Senator McCarran, and H.R. 2379, introduced by Mr. Walter, were presented to the respective two Houses of Congress for their consideration. Following a number of hearings and numerous conferences conducted on the proposed legislation, two modified versions were introduced: S. 2055 by Senator McCarran, and H.R. 5678 by Mr. Walter. It was the modified version introduced by Mr. Walter which was finally adopted and passed by Congress as the Immigration and Nationality Act of 1952.

Where the statutory language of an Act is not plain or where ambiguity exists, the Courts may look to the legislative history for further evidence of the legislative intent in order to determine the policy of the legislation as a whole.

> *Chatwin v. U. S.,* 326 U.S. 455, 464;
>
> *U.S. v. Rosenblum Truck Lines,* 315 U.S. 50, 55.

The Congressional debates shed no light on this pertinent provision of the Immigration and Nationality Act. In the exhaustive study prepared by the Committee on the Judiciary of the United States Senate, Report No. 1515, 81st Congress, 2nd Session, there is a limited explanatory comment pertaining to this provision. At page 703, et seq., when discussing naturalization—special classes—under the subparagraph pertaining to armed service personnel, the following appears:

> "At the present time section 324 of the act provides that a person who has served honorably at any time in the Army, Navy, Marine Corps or Coast Guard for 3 years and who, if separated from the service, has been honorably discharged, may be naturalized upon petition while in the service or within 6 months after termination of his service. No declaration of intention, certificate of arrival, or residence within the court's jurisdiction is required, but with these exceptions the other requirements to naturalization, including racial eligibility, must be complied with. If the alien is in the service at the time of naturalization he may be naturalized immediately by appearing before a representative of the Immigration and Naturalization Service, accompanied by two citizen witnesses. If, however, he files for naturalization more than 6 months after completion of his honorable service, he must comply with the general residence requirements of the act—that is, 5 years' continuous residence in the United States and 6 months in the state—but his service in the armed forces, wherever it has occurred, is to be considered as residence within the United States and the State."

Subsequently, the Committee at page 709, et seq., stated:

> "G. Conclusions and Recommendations.
>
> * * * * * * *
>
> Residence
>
> The subcommittee considers and finds that one of the weak spots in our naturalization law is the lack of uniformity in residence requirements for naturalization. While recognizing the various reasons which prompted enactment of the exceptions to the 5-year residence requirement, the subcommittee feels that the requirement should be made uniform and accordingly recommends:
>
> * * * * * * *
>
> (c) Persons who serve honorably in the armed forces or Coast Guard for 3 years. This class of persons may be naturalized under Section 324 of the present act after 3 years' service, and the subcommittee recommends that this privilege be preserved in the proposed law."

House Report No. 1365, 82nd Congress, 2nd Session, (U.S. Code, Congressional and Administrative News, 1952, Vol. II, page 1737)—with respect to Section 328, contains the following:

> "* * * This provision in Section 328 of this bill carries forward substantially the provisions of existing law in Section 324 of the Nationality Act of 1940."

The foregoing excerpts, indicating the Congressional intent to carry forward the basic principles of Section 324 of the Nationality Act of 1940, clearly indicate the admissibility of this alien to United States citi-

zenship at this time under the judicial precedents heretofore cited.

Attention is also invited to the Act of June 30, 1950 (64 Stat. 316, amended June 27, 1952), which specifically provided that any alien enlisted or re-enlisted *overseas* in the armed forces of the United States was eligible for expeditious naturalization after completion of five or more years of military service, if honorably discharged therefrom and without regard to any admission to the United States. At the time this appellant filed his formal petition for naturalization he had completed approximately four and one-half years of honorable military service within the meaning of Section 328 following induction under the selective service laws. The lower Court's decision denies naturalization to one inducted into the armed forces of the United States while in the United States and, at the same time, the above-cited law specifically provides that one who was enlisted abroad is entitled to this benefit. The incongruity of this position further supports appellant's contention that Congress intended to include aliens such as appellant within the purview of Section 328.

CONCLUSIONS

The right of Congress to prescribe the scope of examination for those who seek the privilege of naturalization is without doubt. The appellant has performed a service or duty that Congress saw fit to reward with special benefits. Since the appellant has

met those qualifications, how can it be said that he is not eligible to that which Congress says he is entitled? The privilege of United States citizenship is cherished by all mankind, and a denial of that privilege—when all of the essential prerequisites have been met, is contrary to all of the legal concepts that form the foundation of our government.

Wherefore, appellant prays that the decision of the District Court be reversed and that he be admitted to United States citizenship.

Dated, San Francisco, California,
November 18, 1963.

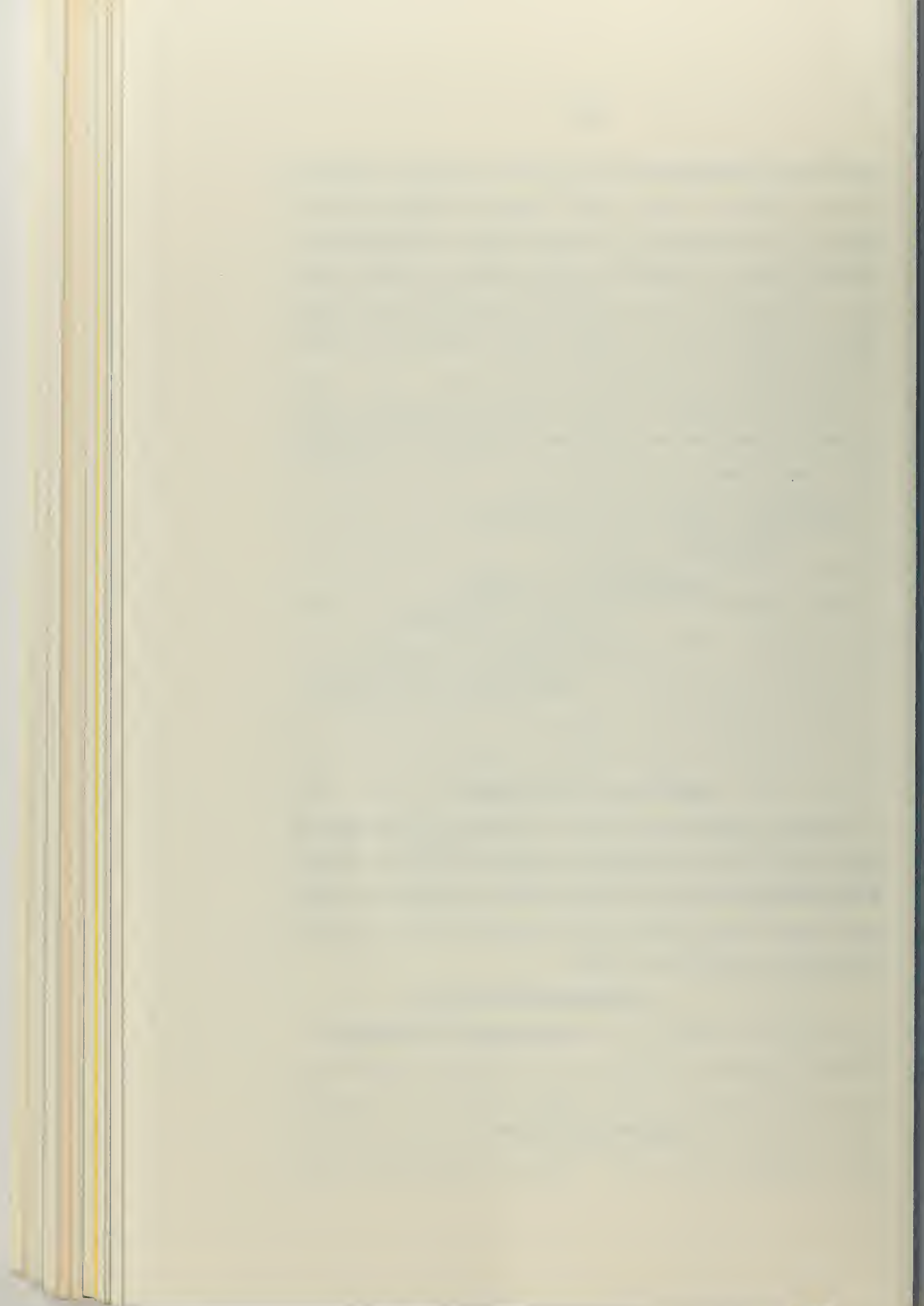
Respectfully submitted,
JACKSON & HERTOGS,
By JOSEPH S. HERTOGS,
Attorneys for Appellant.

CERTIFICATE OF COUNSEL

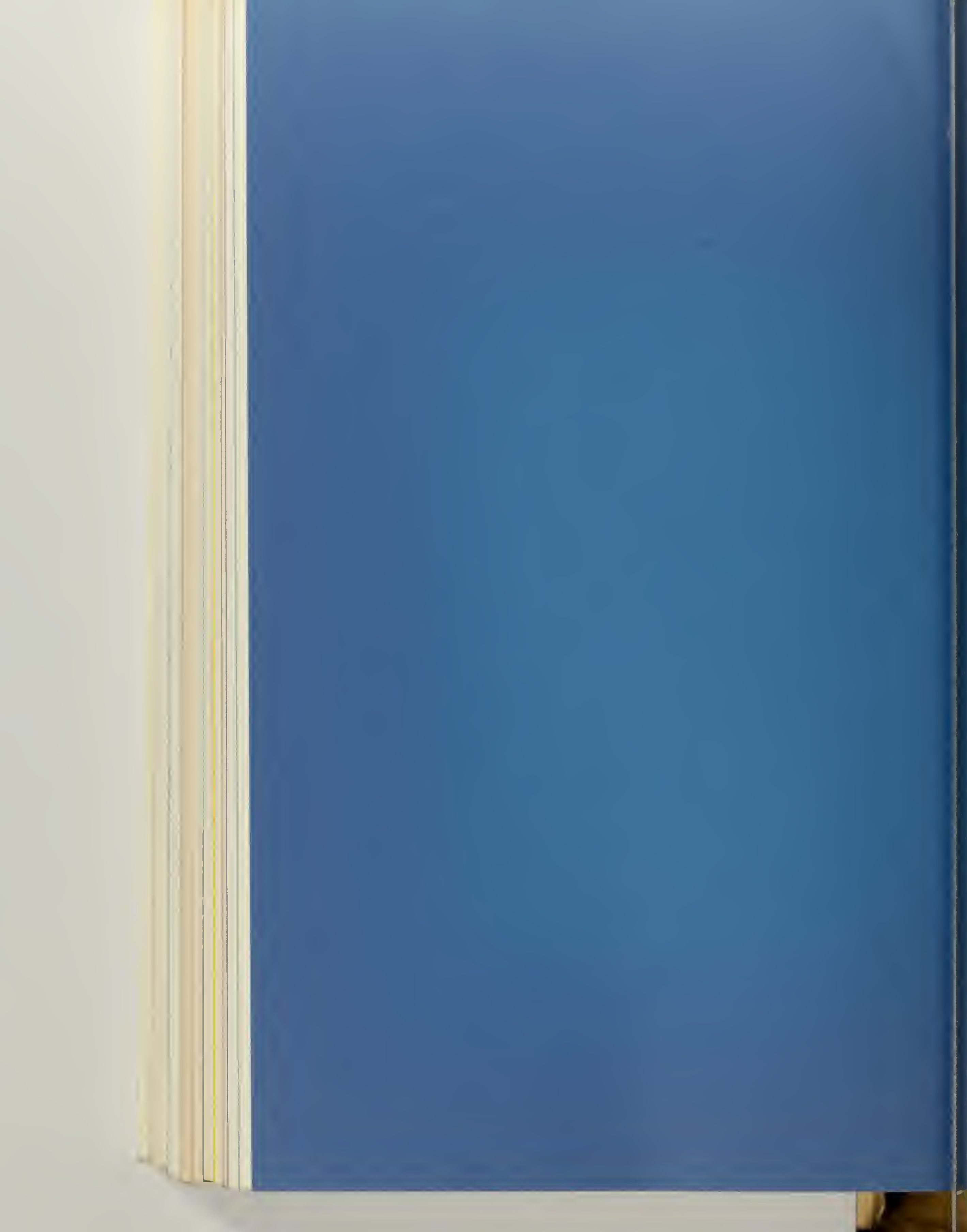
I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

JOSEPH S. HERTOGS,
Attorney for Appellant.

(Appendix Follows)



Appendix.



Appendix

The language of Section 324 of the Nationality Act of 1940 (8 USC 724), and the language of Section 328 of the Immigration and Nationality Act of 1952 (8 USC 1439) for comparison purposes are set forth in adjacent columns below:

Immigration and Nationality Act of 1952, Section 328 (8 U.S.C.A. 1439).

"(a) A person who has served honorably at any time in the armed forces of the United States for a period or periods aggregating three years, and, who, if separated from such service, was never separated except under honorable conditions, may be naturalized without having resided continuously immediately preceding the date of filing such person's petition, in the United States for at least five years, and in the State in which the petition for naturalization is filed for at least six months, and without having been physically present in the United States for any specified period if such petition is filed while the petitioner is still in the service or within six months after the termination of such service.

Nationality Act of 1940, Section 324 (8 U.S.C.A. 724).

"(a) A person, including a native-born Filipino, who has served honorably at any time in the United States Army, Navy, Marine Corps, or Coast Guard for a period or periods aggregating three years and who, if separated from such service, was separated under honorable conditions may be naturalized without having resided, continuously immediately preceding the date of filing such person's petition, in the United States for at least five years and in the State in which the petition for naturalization is filed for at least six months, if such petition is filed while the petitioner is still in the Service or within six months after the termination of such service.

Immigration and Nationality Act of 1952, Section 328 (8 U.S.C.A. 1439).

EXCEPTIONS.

(b) A person filing a petition under subsection (a) of this section shall comply in all other respects with the requirements of this subchapter, except that—

(1) no residence within the jurisdiction of the court shall be required;

(2) notwithstanding section 1447(c) of this title, such petitioner may be naturalized immediately if the petitioner be then actually in the Armed Forces of the United States, and if prior to the filing of the petition, the petitioner and the witnesses shall have appeared before and been examined by a representative of the Service;

(3) the petitioner shall furnish to the Attorney General, prior to the final hearing upon his petition, a certified statement from the proper executive department for each period of his service upon which he relies for the benefits of this section, clearly showing that such service was honorable and that no discharges from service, including periods of service not relied upon by him for the benefits of this section, were other than honorable. The certificate or certificates herein provided for shall be conclusive evidence of such service and discharge.

Nationality Act of 1940, Section 324 (8 U.S.C.A. 724).

(b) A person filing a petition under subsection (a) of this section shall comply in all respects with the requirements of this subchapter except that—

(1) No declaration of intention shall be required;

(2) No certificate of arrival shall be required;

(3) No residence within the jurisdiction of the court shall be required;

(4) Such petitioner may be naturalized immediately if the petitioner be then actually in any of the services prescribed in subsection (a) of this section, and if, before filing the petition for naturalization, such petitioner and at least two verifying witnesses to the petition, who shall be citizens of the United States and who shall identify petitioner as the person who rendered the service upon which the petition is based, have appeared before and been examined by a representative of the Service.

Immigration and Nationality Act of 1952, Section 328 (8 U.S.C.A. 1439).

WHEN SERVICE NOT CONTINUOUS.

(c) In the case such petitioner's service not continuous, the petitioner's residence in the United States and State, good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during any period within five years immediately preceding the date of filing such petition between the periods of petitioner's service in the Armed Forces, shall be alleged in the petition filed under the provisions of subsection (a) of this section, and proved at the final hearing thereon. Such allegation and proof shall also be made as to any period between the termination of petitioner's service and the filing of the petition for naturalization.

Nationality Act of 1940, Section 324 (8 U.S.C.A. 724).

(c) In case such petitioner's service was not continuous, petitioner's residence in the United States and State, good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during any period within five years immediately preceding the date of filing said petition between the periods of petitioner's service in the United States Army, Navy, Marine Corps, or Coast Guard, shall be verified in the petition filed under the provisions of subsection (a) of this section, and proved at the final hearing thereon by witnesses, citizens of the United States, in the same manner as required by Section 709. Such verification and proof shall also be made as to any period between the termination of petitioner's service and the filing of the petition for naturalization.

Immigration and Nationality Act of 1952, Section 328 (8 U.S.C.A. 1439).

RESIDENCE REQUIREMENT.

(d) The petitioner shall comply with the requirements of section 1427(a) of this title, if the termination of such service has been more than six months preceding the date of filing the petition for naturalization, except that such service within five years immediately preceding the date of filing such petition shall be considered as residence and physical presence within the United States

MORAL CHARACTER.

(e) * * *"

Nationality Act of 1940, Section 324 (8 U.S.C.A. 724).

(d) The petitioner shall comply with the requirements of section 709 as to continuous residence in the United States for at least five years and in the State in which the petition is filed for at least six months, immediately preceding the date of filing the petition, if the termination of such service has been more than six months preceding the date of filing the petition for naturalization, except that such service shall be considered as residence within the United States or the State.

(e) * * *"

NOTE

The Immigration and Nationality Act of 1952 eliminated filing of a Declaration of Intention of a Certificate of Arrival in all cases. Thus, the provisions mentioned in subparagraphs (b)(1) and (b)(2) of Section 324 of the Nationality Act of 1940, set forth above, are no longer required.

Section 316 of the Immigration and Nationality Act (8 U.S.C.A. 1427):

"(a) No person, except as otherwise provided in this title, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for

permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half of that time, and who has resided within the State in which the petitioner filed the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all of the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

Section 318 of the Immigration and Nationality Act (8 U.S.C.A. 1429):

"Except as otherwise provided in this title, no person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of this Act. * * * Notwithstanding the provisions of Section 405(b), and except as provided in sections 327 and 328 no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: * * *."